

United States District Court
Southern District of New York

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Alpha Capital Anstalt,

09 CV 670 (LAK)

Plaintiff,

v.

Advanced Cell Technology, Inc.,

Defendant.

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Affidavit of William Caldwell

William Caldwell hereby states under penalty of perjury under the laws of the United States of America:

1. I am the Chief Executive Officer of Advanced Cell Technology, Inc., Defendant in the above-captioned action.

2. ACTI is a biotechnology company focused on applying stem cell technology in the field of regenerative medicine to bring effective, patient-specific therapies to market. ACTI stock is publicly available and traded on the pink sheets at ACTC.PK. The stock closed on February 3, 2009 at \$0.19 per share. The price of ACTI at any given moment is readily ascertainable.

3. On or about August 31, 2007, Alpha Cell Technology, Inc. ("Alpha") and ACTI entered into a Securities Purchase Agreement ("SPA") (Exhibit B to Order to Show Cause). Section 3.1(ii) of the SPA purports to obtain ACTI's consent to, and acknowledgement of Alpha's market activities. It provides, in relevant part:

(ii) Acknowledgement Regarding Purchasers' Trading Activity. Anything in this Agreement or elsewhere herein to the contrary notwithstanding (except for Section 4.16 hereof), it is understood and agreed by the Company (i) that none of the Purchasers have been asked to agree, nor has any Purchaser agreed, to desist from purchasing or selling,

long and/or short, securities of the Company, or “derivative” securities based on securities issued by the Company or to hold the Securities for any specified term; (ii) that past or future open market or other transactions by any Purchaser, including Short Sales, and specifically including, without limitation, Short Sales or “derivative” transactions, before or after the closing of this or future private placement transactions, may negatively impact the market price of the Company’s publicly-traded securities; ... The Company further understands that and acknowledges that (a) one or more Purchasers may engage in hedging activities at various time during the period that the Securities are outstanding, including, without limitation, during the periods that the value of the Underlying Shares deliverable with respect to Securities are being determined and (b) such hedging activities (if any) could reduce the value of the existing stockholders’ equity interests in the Company at and after the time that the hedging activities are being conducted. The Company acknowledges that such aforementioned hedging activities do not constitute a breach of any of the Transaction Documents.

4. Pursuant to the SPA, Alpha purchased from ACTI a \$376,500 face value Convertible Debenture on or about August 31, 2007 (“Debenture I”) and a \$107,930 face value Convertible Debenture in early April 2008 (“Debenture II”) (collectively, the “Debentures”).
5. Alpha is not the only ACTI debenture holder. If Alpha receives the remedy it seeks, all other debenture holders would be entitled to a similar adjustment pursuant to their applicable Securities Purchase Agreements and Debentures.
6. ACTI’s last public filing was for 1Q 2008. Until ACTI is current and in compliance with Securities & Exchange Commission (“SEC”) filing requirements, ACTI cannot issue a proxy for the authorization to issue new shares of stock. Providing ACTI with more time to fulfill its SEC reporting requirements and obtain authorization to issue new shares benefits all ACTI securities holders, including Alpha.
7. If a preliminary injunction is granted, ACTI will be precluded from funding ongoing operations and, in all likelihood, will cease to exist as a publicly traded company. ACTI is currently precluded from authorizing the issuance of new shares because it is not current on its

reporting requirements with the SEC. However, ACTI is in the process of rectifying this situation and is hopeful that it will be current, and thereby eligible to issue a proxy for the issuance of new shares, in the near future. ACTI further has access to authorized shares that have been allocated to employees under an Employee Stock Ownership Plan ("ESOP"). These shares, with the approval of the employee or ESOP administrator, as applicable, could be used to obtain additional funding for the company.

8. At current market values, the damages suffered by ACTI in the event such relief is granted are at least \$8 million in lost funding. These losses are potentially much greater if ACTI's stock price continues to increase and additional shares are authorized once the company meets all reporting requirements.

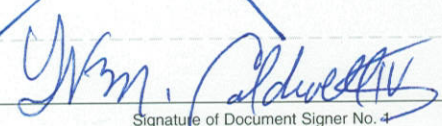
Dated: February 4, 2009


William Caldwell

CALIFORNIA JURAT WITH AFFIANT STATEMENT

- ☒ See Attached Document (Notary to cross out lines 1–6 below)
☐ See Statement Below (Lines 1–5 to be completed only by document signer[s], *not* Notary)

1
2
3
4
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6



Signature of Document Signer No. 4

Signature of Document Signer No. 2 (if any)

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this

5th day of February, 2009, by

Date Month Year

(1) William Caldwell

Name of Signer

proved to me on the basis of satisfactory evidence
to be the person who appeared before me (.) (,)

(and

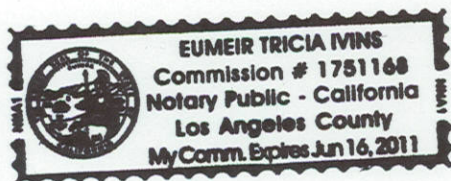
(2) _____

Name of Signer

proved to me on the basis of satisfactory evidence
to be the person who appeared before me.)

Signature 

Signature of Notary Public



Place Notary Seal Above

OPTIONAL

*Though the information below is not required by law, it may prove
valuable to persons relying on the document and could prevent
fraudulent removal and reattachment of this form to another document.*

Further Description of Any Attached DocumentTitle or Type of Document: Affidavit of William CaldwellDocument Date: February 4, 2009 Number of Pages: 3

Signer(s) Other Than Named Above: _____

**RIGHT THUMBPRINT
OF SIGNER #1**
Top of thumb here

**RIGHT THUMBPRINT
OF SIGNER #2**
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